

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BOOKER J. SMITH,

Plaintiff,

v.

Case No. 14-C-1215

**CAROLYN COLVIN,
Acting Commissioner of the
Social Security Administration,**

Defendant.

DECISION AND ORDER

Plaintiff-Claimant Booker J. Smith (“Smith”) seeks leave to proceed *in forma pauperis* on the appeal from the denial of his application for social security supplemental income benefits. (ECF No. 2.) In order to authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: First, whether the litigant is unable to pay the costs of commencing this action; and, second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a) and (e)(2)(B)(i).

By his petition and affidavit to proceed *in forma pauperis*, Smith avers that he is single. He receives \$189 in public assistance and owns no valuable property. Smith also indicates that he is supported by the

“DOC,” an abbreviation which is used for the Wisconsin Department of Corrections. The Court concludes that Smith has satisfied the requirements of 28 U.S.C. § 1915(a) and is unable to pay the \$350 filing fee for this action.

Smith must next demonstrate that this action has merit, as required by 28 U.S.C. § 1915(e)(2)(B)(i). An action is frivolous if there is no arguable basis for relief either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)); *Casteel v. Pieschek*, 3 F.3d 1050, 1056 (7th Cir. 1993).

Under 42 U.S.C. § 405(g), a plaintiff may obtain review of the Social Security Commissioner’s decision. The reviewing district court examines the Commissioner’s final decision to determine whether substantial evidence supports it and the proper legal criteria was applied. *See Allord v. Astrue*, 631 F.3d 411, 415 (7th Cir. 2011).

The Complaint states that the administrative law judge and the Appeals Council overlooked parts of Smith’s case. (See Compl. 4.) (ECF No. 1.) At this preliminary stage of the proceedings, the Court concludes that there may be a basis in law or in fact for Smith’s appeal of the Commissioner’s decision and the appeal may have merit, as defined by 28 U.S.C. § 1915(e)(2)(B)(i). Therefore, the Court grants Smith’s request to

proceed *in forma pauperis*.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Smith's petition for leave to proceed *in forma pauperis* (ECF No. 2) is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 14th day of October, 2014.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge